



AN ACT REVISING LAWS RELATED TO SCHOOL TUITION; CLARIFYING THE ENTITIES FOR WHICH A DISTRICT MAY CHOOSE TO WAIVE TUITION; AUTHORIZING TRUSTEES OF A UNIFIED SCHOOL SYSTEM TO WAIVE TUITION REGARDLESS OF WHETHER THE STUDENT WAS OR WAS NOT A RESIDENT OF THE ELEMENTARY DISTRICT UNIFIED WITH A COUNTY HIGH SCHOOL; AMENDING SECTIONS 20-5-320 AND 20-5-321, MCA; AND PROVIDING AN EFFECTIVE DATE.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

**Section 1.** Section 20-5-320, MCA, is amended to read:

**"20-5-320. Attendance with discretionary approval.** (1) A child may be enrolled in and attend a school in a Montana school district that is outside of the child's district of residence or a public school in a district of another state or province that is adjacent to the county of the child's residence, subject to discretionary approval by the trustees of the resident district and the district of choice. If the trustees grant discretionary approval of the child's attendance in a school of the district, the parent or guardian may be charged tuition and may be charged for transportation.

(2) (a) Whenever a parent or guardian of a child wishes to have the child attend a school under the provisions of this section, the parent or guardian shall apply to the trustees of the district where the child wishes to attend. The application must be made on an out-of-district attendance agreement form supplied by the district and developed by the superintendent of public instruction.

(b) The attendance agreement must set forth the financial obligations, if any, for tuition and for costs incurred for transporting the child under Title 20, chapter 10.

(c) (i) The trustees of the district of choice may waive any or all of the tuition rate. The trustees of the district of choice may waive the tuition for all students whose tuition is required to be paid by one type of entity and may charge tuition for all students whose tuition is required to be paid by another type of entity. However,

any waiver of tuition must be applied equally to all students whose tuition is paid by the same type of entity.

(ii) As used in this subsection (2)(c), "entity" ~~means a parent or guardian or the trustees of the district of residence~~ includes:

(A) except as provided in subsection (2)(c)(ii)(B), a parent or guardian of a student who is a nonresident of the district of choice;

(B) a parent or guardian of a student who lives in a location where one unified school system as provided in 20-6-312 is the district of residence for grades K-8 and another unified school system as provided in 20-6-312 is the district of residence for grades 9-12; and

(C) the trustees of the district of residence.

(3) An out-of-district attendance agreement approved under this section requires that the parent or guardian initiate the request for an out-of-district attendance agreement and that the trustees of both the district of residence and the district of choice approve the agreement.

(4) If the trustees of the district of choice waive tuition, approval of the resident district trustees is not required.

(5) The trustees of a school district may approve or disapprove the out-of-district attendance agreement consistent with this part and the policy adopted by the local board of trustees for out-of-district attendance agreements.

(6) The approval of an out-of-district attendance agreement by the applicable approval agents or as the result of an appeal must authorize the child named in the agreement to enroll in and attend the school named in the agreement for the designated school year.

(7) The trustees of the district where the child wishes to attend have the discretion to approve any attendance agreement.

(8) This section does not preclude the trustees of a district from approving an attendance agreement for educational program offerings not provided by the resident district, such as the kindergarten or grades 7 and 8 programs, if the trustees of both districts agree to the terms and conditions for attendance and any tuition and transportation requirement. For purposes of this subsection, the trustees of the resident district shall initiate the out-of-district agreement.

(9) (a) A provision of this title may not be construed to deny a parent or guardian the right to send a

child, at personal expense, to any school of a district other than the resident district when the trustees of the district of choice have approved an out-of-district attendance agreement and the parent or guardian has agreed to pay the tuition as prescribed by 20-5-323. However, under this subsection (9), the tuition rate must be reduced by the amount that the parent or guardian of the child paid in district property taxes during the immediately preceding school fiscal year for the benefit and support of the district in which the child will attend school.

(b) For the purposes of this section, "parent or guardian" includes an individual shareholder of a domestic corporation whose shares are 95% held by related family members to the sixth degree of consanguinity or by marriage to the sixth degree of affinity.

(c) The tax amount to be credited to reduce any tuition charge to a parent or guardian under subsection (9)(a) is determined in the following manner:

(i) determine the percentage of the total shares of the corporation held by the shareholder parent or parents or guardian;

(ii) determine the portion of property taxes paid in the preceding school fiscal year by the corporation, parent, or guardian for the benefit and support of the district in which the child will attend school.

(d) The percentage of total shares as determined in subsection (9)(c)(i) is the percentage of taxes paid as determined in subsection (9)(c)(ii) that is to be credited to reduce the tuition charge.

(10) As used in 20-5-320 through 20-5-324, the term "guardian" means the guardian of a minor as provided in Title 72, chapter 5, part 2."

**Section 2.** Section 20-5-321, MCA, is amended to read:

**"20-5-321. Attendance with mandatory approval -- tuition and transportation.** (1) An out-of-district attendance agreement that allows a child to enroll in and attend a school in a Montana school district that is outside of the child's district of residence or in a public school district of a state or province that is adjacent to the county of the child's residence is mandatory whenever:

(a) the child resides closer to the school that the child wishes to attend and more than 3 miles from the school the child would attend in the resident district and the resident district does not provide transportation;

(b) (i) the child resides in a location where, because of geographic conditions between the child's

home and the school that the child would attend within the district of residence, it is impractical to attend school in the district of residence, as determined by the county transportation committee based on the following criteria:

(A) the length of time that is in excess of the 1-hour limit for each bus trip for an elementary child as authorized under 20-10-121;

(B) whether distance traveled is greater than 40 miles one way from the child's home to school on a dirt road or greater than a total of 60 miles one way from the child's home to school in the district of residence over the shortest passable route; or

(C) whether the condition of the road or existence of a geographic barrier, such as a river or mountain pass, causes a hazard that prohibits safe travel between the home and school.

(ii) The decision of the county transportation committee is subject to appeal to the superintendent of public instruction, as provided in 20-3-107, but the decision must be considered as final for the purpose of the payment of tuition under 20-5-324(5)(a)(ii) until a decision is issued by the superintendent of public instruction. The superintendent of public instruction may review and rule upon a decision of the county transportation committee without an appeal being filed.

(c) (i) the child is a member of a family that is required to send another child outside of the elementary district to attend high school and the child of elementary age may more conveniently attend an elementary school where the high school is located, provided that the child resides more than 3 miles from an elementary school in the resident district or that the parent is required to move to the elementary district where the high school is located to enroll another child in high school. A child enrolled in an elementary school pursuant to this subsection ~~(4)(e)~~ (1)(c)(i) may continue to attend the elementary school after the other child has left the high school.

(ii) the child is a member of a family that is required to send another child outside of the high school district to attend elementary school and the child of high school age may more conveniently attend a high school where the elementary school is located, provided that the child resides more than 3 miles from a high school in the resident district or that the parent is required to move to the high school district where the elementary school is located to enroll another child in elementary school. A child enrolled in a high school pursuant to this subsection (1)(c)(ii) may continue to attend the high school after the other child has left the

elementary school.

(d) the child is under the protective care of a state agency or has been adjudicated to be a youth in need of intervention or a delinquent youth, as defined in 41-5-103; or

(e) the child is required to attend school outside of the district of residence as the result of a placement in foster care or a group home licensed by the state.

(2) (a) Whenever a parent or guardian of a child, an agency of the state, or a court wishes to have a child attend a school under the provisions of this section, the parent or guardian, agency, or court shall complete an out-of-district attendance agreement in consultation with an appropriate official of the district that the child will attend.

(b) The attendance agreement must set forth the financial obligations, if any, for costs incurred for tuition and transportation as provided in 20-5-323 and Title 20, chapter 10.

(c) (i) The trustees of the district of choice may waive any or all of the tuition rate.—The trustees of the district of choice may waive the tuition for all students whose tuition is required to be paid by one type of entity and may charge tuition for all students whose tuition is required to be paid by another type of entity. However, any waiver of tuition must be applied equally to all students whose tuition is paid by the same type of entity.

(ii) As used in this subsection (2)(c), "entity" ~~means a parent, a guardian, the trustees of the district of residence, or a state agency~~ includes:

(A) except as provided in subsection (2)(c)(ii)(B), a parent or guardian of a student who is a nonresident of the district of choice;

(B) a parent or guardian of a student who lives in a location where one unified school system as provided in 20-6-312 is the district of residence for grades K-8 and another unified school system as provided in 20-6-312 is the district of residence for grades 9-12;

(C) the trustees of the district of residence; and

(D) a state agency.

(3) Except as provided in subsection (4), the trustees of the resident district and the trustees of the district of attendance shall approve the out-of-district attendance agreement. The trustees of the district of attendance shall:

(a) notify the county superintendent of schools of the county of the child's residence of the approval of the agreement within 10 days; and

(b) submit the agreement for a student attending under the provisions of subsection (1)(d) or (1)(e) to the superintendent of public instruction for approval for payment under 20-5-324.

(4) Unless the child is a child with a disability who resides in the district, the trustees of the district where the school to be attended is located may disapprove an out-of-district attendance agreement whenever they find that, because of insufficient room and overcrowding, the accreditation of the school would be adversely affected by the acceptance of the child."

**Section 3. Effective date.** [This act] is effective July 1, 2021.

- END -

I hereby certify that the within bill,  
HB 454, originated in the House.

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Chief Clerk of the House

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Speaker of the House

Signed this \_\_\_\_\_ day  
of \_\_\_\_\_, 2021.

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President of the Senate

Signed this \_\_\_\_\_ day  
of \_\_\_\_\_, 2021.

HOUSE BILL NO. 454

INTRODUCED BY V. RICCI

AN ACT REVISING LAWS RELATED TO SCHOOL TUITION; CLARIFYING THE ENTITIES FOR WHICH A DISTRICT MAY CHOOSE TO WAIVE TUITION; AUTHORIZING TRUSTEES OF A UNIFIED SCHOOL SYSTEM TO WAIVE TUITION REGARDLESS OF WHETHER THE STUDENT WAS OR WAS NOT A RESIDENT OF THE ELEMENTARY DISTRICT UNIFIED WITH A COUNTY HIGH SCHOOL; AMENDING SECTIONS 20-5-320 AND 20-5-321, MCA; AND PROVIDING AN EFFECTIVE DATE.